



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 2584-99
14 September 1999

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 22 July 1993 after four years of prior active service. Your record reflects that on 23 September 1993 you received nonjudicial punishment (NJP) for absence from your appointed place of duty. You received a second NJP on 18 September 1996 for a brief period of unauthorized absence (UA), violation of a lawful general regulation on two occasions, drunken or reckless operation of your car on two occasions, drunken or reckless operation of your car on two occasions, and being drunk on duty. The punishment imposed consisted of forfeiture of one-half months pay, restriction and extra duty for 45 days, and reduction in pay grade to BM3 (E-4).

The Board noted your contentions concerning the imposition of NJP on 18 September 1996, but found that the contentions were insufficient to warrant the deletion of established misconduct from your record. In this regard, the Board noted that the UA offense resulted from your being late to work, and concluded that

it might have been more appropriate to charge this infraction as a failure to go to your appointed place of duty. However, this does not mean that the charge of UA was improper. Your contention that certain evidence was improperly used at the NJP is also without merit given the provisions of paragraph 4c(3) of Part V to the Manual for Courts-Martial, which essentially states that any relevant evidence may be considered. Further, although you were not stopped while driving drunk, the record shows that when you reported for work, you were found to be drunk. Since you drove to work on both occasions and had been drinking while driving, this charge was substantiated. That part of OPNAVINST 5350.4 which you cite pertains to urinalysis conducted for drug abuse and, therefore, it is inappropriate to your case. Finally, you were not charged with drinking on duty but with violating a regulation which prohibits consumption of alcoholic beverages within 12 hours of reporting for duty. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director